



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: *Gross*

) Art Unit: 3621

Serial No.: 10/771,049

) Examiner: Not Assigned

Filed: 02/02/2004

)

For: *Notification system and method for media queue*

)

PETITION TO MAKE SPECIAL
UNDER 37 C.F.R. § 1.102(D) AND MPEP § 708.02 (II)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby respectfully petitions that the above application be made special under MPEP § 708.02 for the following reason, namely, that actual infringement exists.

A declaration in support thereof is included.

Copies of the references deemed most closely related to the subject matter encompassed by the claims were previously provided by way of an Information Disclosure Statement filed June 10, 2004.

Please charge any fees, including any amount specified by 1.17(h), to deposit account no. 501-244.

02/01/2005 MAHED1 00000042 501244 10771049

01 FC:1464 130.00 DA

Respectfully submitted,

J. Nicholas Gross
Registration No. 34,175
Attorney for Applicant(s)

January 25, 2005
726 Duboce Ave.
San Francisco, CA 94117
Tel. (415) 355-9800
Fax (415) 355-9006

I hereby certify that the foregoing is being deposited with the U.S. Postal Service, postage prepaid, to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 this 25th day of January 2005.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: *Gross*) Art Unit: 3621
Serial No.: 10/771,049) Examiner: Not Assigned
Filed: 02/02/2004)
For: *Notification system and method for media queue*)

**DECLARATION IN SUPPORT OF PETITION TO MAKE SPECIAL
UNDER 37 C.F.R. § 1.102(D) AND MPEP § 708.02 (II)**

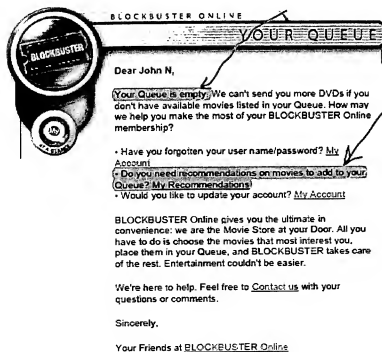
In support of the accompanying Petition, Applicant declares as follows:

1. I am the applicant of the above identified application, as well as the attorney of record. My Patent Office Registration number is 34175.
2. I allege that there is an infringing use of the methods of such application by the operations of a commercial Internet website operated by Blockbuster for renting DVD movies, as found at <http://www.blockbuster.com>.
3. I declare that I have made a rigid comparison between the Blockbuster web site operations and the claims of this application, and in my opinion, at least claim 11 of such application is unquestionably infringed:

1. A method of notifying a subscriber to a content provider of activity in a subscriber rental queue associated with the subscriber, including the steps of:	The Blockbuster (BBI) website notifies subscribers of activity in their rental queues; See, e.g. http://www.blockbuster.com/home.html
a. defining a set of notification rules for the subscriber rental queue, which notification rules are authorized by the subscriber;	As part of capturing subscriber preferences, the BBI website includes a Newsletter <u>notification</u> option that is configured on a user by user basis for their respective rental queues. Individual subscribers can opt in (authorize) BBI to send such materials. See, eg. http://www.blockbuster.com/corporate/displayHelpDetails.action?articleId=1083058 and http://blockbuster.qrs1.net/bbsmi/sub/UserTypeAction.do
b. monitoring the subscriber rental queue in accordance with said set of notification rules and a separate set of queue replenishment control rules authorized by the subscriber to determine if a composition and/or ordering of playable media titles in the subscriber rental queue should be altered;	BBI "monitors" the subscriber rental queues in accordance with the options selected above. The subscriber is also requested to rate movies so that a recommendation engine can give suggestions on new movies to be added. The recommendation engine thus effectuates a set of queue replenishment control rules to be used to alter the rental queue.

c. sending a notification to the subscriber in response to an affirmative determination under step (b) that such notification is necessary based on said set of notification rules.

A notification is sent to the subscriber as seen below, under conditions, for example, where there is new material that can be added to the queue because it is empty.



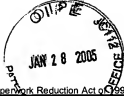
4. I have made or caused to be made a careful and thorough search of the prior art. Copies of the references deemed most closely related to the subject matter encompassed by the claims were previously provided in an Information Disclosure Statement filed June 10, 2004.
5. I further declare under penalty of perjury that all statements made herein are true to the best of my knowledge, information and belief.

Respectfully submitted,

J. Nicholas Gross
J. Nicholas Gross

January 25, 2005
726 Duboce Ave.
San Francisco, CA 94117
Tel. (415) 355-9800
Fax (415) 355-9006

I hereby certify that the foregoing is being deposited with the U.S. Postal Service, postage prepaid, to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 this 25th day of January 2005.



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$ 130)

Complete if Known

Application Number 10/771,049

Filing Date February 2, 2004

First Named Inventor Gross

Examiner Name N/A

Art Unit 3621

Attorney Docket No. JNG 2004-5

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit
Account
Number
Deposit
Account
Name

501244

J. Nicholas Gross

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1020	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		Extra Claims		Fee from below	Fee Paid
Independent	Multiple	20**	3**		

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	88	2201	44	Independent claims in excess of 3	
1203	300	2203	150	Multiple dependent claim, if not paid	
1204	88	2204	44	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130
1807	50	1807	50	Processing fee under 37 CFR 1.17(g)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 130)

SUBMITTED BY

Name (Print/Type) J. Nicholas Gross

Registration No. (Attorney/Agent)

34,175

Telephone 415-355-9800

Signature

J. Nicholas Gross

Date

January 25, 2005

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.